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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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  Qun Tian et al.,

                     Plaintiffs,          MEMORANDUM & ORDER
                                          #22-cv-00345 (EK)(VMS)
                  -against-

  Top Food Trading Inc. et al.,

                     Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Scanlon's Report and Recommendation dated February 26, 2024. ECF No. 89. Judge Scanlon recommends that the court deny defendants' Motion to Dismiss as to Counts I, II and V of plaintiffs' Fourth Amended Complaint and grant the Motion to Dismiss with leave to replead as to Counts III and IV of plaintiffs' Fourth Amended Complaint. Neither party has filed objections and the time to do so has expired. Accordingly, the Court reviews the recommendations for clear error on the face of the record. *See* Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition; *accord* S*tate Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013). Having reviewed the record, I find no error and therefore adopt the R&R in its entirety.

Plaintiffs prematurely filed their Fifth Amended Complaint, ECF No. 92, without waiting for this Order adopting the Report and Recommendation and granting leave to replead Counts III and IV. Despite this, the Court will — in light of the adoption of the R&R — deem the Fifth Amended Complaint to be the operative complaint in this matter. Within forty-eight hours of this Order, Plaintiffs are directed to file a blackline indicating the changes between the Fifth Amended Complaint and the Fourth Amended Complaint pursuant to Rule III(A)(1) of the court's Individual Rules and Practices.

By June 1, 2024, defendants shall either answer the Fifth Amended Complaint or renew their motion to dismiss against Counts III and IV in a letter of not more than seven pages. If defendants renew their motion to dismiss, plaintiffs should respond to that motion — also in a letter of seven pages or less — by June 21, 2024.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: May 1, 2024
Brooklyn, New York